

Before the
Administrative Hearing Commission
State of Missouri



SHEN CORTEZ WILLIAMS,

Petitioner,

vs.

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Respondent.

No. 13-0136 EM

DECISION

We deny Shen Cortez Williams' applications for licensure as a funeral director and a pre-need agent funeral director in Missouri.

Procedure

Williams filed a complaint on January 29, 2013, appealing the decision by the State Board of Embalmers and Funeral Directors ("the Board") to deny his applications for licensure as a funeral director and pre-need agent funeral director. The Board filed an answer on February 25, 2013.

We held a hearing on December 20, 2013. C. Dennis Barbour represented Williams; Assistant Attorney General You-Jin J. Han represented the Board. The case became ready for our decision on June 9, 2014, the date the last written argument was due. Commissioner Karen

A. Winn, having read the full record including all the evidence, renders the decision. Section 536.080.2, RSMo 2000; *Angelos v. State Bd. of Regis'n for the Healing Arts*, 90 S.W.3d 189 (Mo. App., S.D. 2002).

Findings of Fact

1. Williams married his wife in 1992. She had two young children, a boy and a girl, from a previous marriage. Williams had a young daughter from a previous relationship who, at the time of the following events, did not live with him. Another daughter was born to Williams and his wife in 1992.

2. In 1997, Williams' wife had an affair. When he discovered this fact and confronted her, they had a violent argument and he pushed her and punched her.

3. On July 17, 1997, Williams pled guilty in the Circuit Court of St. Louis County to the Class C felony of assault in the second degree, in violation of § 565.060, RSMo 1994,¹ for the above incident.

4. For this offense, Williams received a suspended imposition of sentence and five years' probation. He completed an anger management class.

5. In 1999, Williams, while visiting his daughter at her mother's house, followed another sixteen-year-old girl who was also present at the house into a bathroom. He pulled down her pants, inserted a finger into her "privates," and exposed himself to her.

6. The incident was not reported to the police for about three weeks, but when it was, the police investigated it. Williams surrendered himself to the police and cooperated with the investigation. He was indicted for statutory sodomy and sexual misconduct.

¹ The Board cites RSMo. Supp. 1993, but RSMo 1994 would appear to be the law in effect at the time. Statutory references are to RSMo Supp. 2013, unless otherwise indicated.

7. Williams initially pled not guilty and fought the charges. After he had spent about \$10,000 defending the case, he had exhausted his resources. He agreed to plead guilty and accept a suspended imposition of sentence.

8. Thus, on March 6, 2000, Williams pled guilty in the Circuit Court of the City of St. Louis to the Class C felony of statutory sodomy in the second degree, in violation of § 566.064, RSMo 1994,² and the Class A misdemeanor of second-degree sexual misconduct, in violation of § 566.093, RSMo 1994.³

9. For these sexual offenses, Williams received a suspended imposition of sentence with two years' probation. He was required to complete sex offender counseling, which he did, and to have no contact with the victim of the sexual offenses. He was prohibited from transporting children in his employment. He was also required to register as a sex offender, and he remains registered as one today.

10. On March 23, 2000, because of the sexual offenses, the court revoked Williams' probation for the assault. He was sentenced to seven years' incarceration. Williams served 120 days of shock time and the court suspended execution of the remainder of the sentence and then placed him on probation, which he successfully completed.

11. On April 26, 2004, Williams became involved in an altercation with his sixteen-year-old stepson after he asked him to leave his residence and the stepson refused. Williams' wife called the police and Williams was arrested, but the charges were later dropped.

12. Williams joined his church and has been an active member since then. He is still married to his wife and has supported his family through the years by driving a cab.

13. Williams has also worked part time in the funeral industry under the direction of licensed funeral directors. He has done work with clients, and he has removed remains.

² The Board cites RSMo 2000, but RSMo 1994 would appear to be the law in effect at the time.

³ The Board cites RSMo Supp. 1999, but RSMo 1994 would appear to be the law in effect at the time.

14. Williams has taken and passed the necessary examinations for licensure.

15. On July 25, 2011, Williams submitted an application for licensure as a funeral director by education.

16. In December 2012, Williams submitted an application for a pre-need agent funeral director license to the Board, and he submitted an amended application that month.

17. By letter dated January 29, 2013, the Board denied Williams' applications.

Conclusions of Law

We have jurisdiction to hear Williams' complaint because he seeks our review of the Board's decision to deny him licensure. Section 621.045; § 621.120, RSMo 2000; § 333.330.1. Williams has the burden to prove, by a preponderance of the evidence, that he is entitled to a license. § 621.120; *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 230 (Mo. App. W.D., 2012). In determining whether to grant a license, we exercise the same authority that has been granted to the Board. Therefore, we simply decide the application *de novo*. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012).

When an applicant for licensure files a complaint, the agency's answer provides notice of the issues. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D., 1984). In its answer, the Board alleges there is cause to deny Williams' license under § 333.330:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of

registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence[.]

The Board also alleges there is cause to deny Williams' a license under § 333.041.1(2), which provides that "Each applicant for a license to practice funeral directing shall furnish evidence to establish to the satisfaction of the board that he or she is . . . [a] person of good moral character."

A. Criminal Offenses

Williams pled guilty to three criminal offenses – second-degree assault, second-degree statutory sodomy, and second-degree sexual misconduct. We must determine whether they are either reasonably related to the qualifications, functions, or duties of a funeral director; or whether fraud, dishonesty, or an act of violence is an essential element of any of them.

1. Second-Degree Assault

At the time of Williams' guilty plea, second-degree assault was defined in § 565.060, RSMo 1994, as follows:

1. A person commits the crime of assault in the second degree if he:
 - (1) Attempts to kill or knowingly causes or attempts to cause serious physical injury to another person under the influence of sudden passion arising out of adequate cause; or
 - (2) Attempts to cause or knowingly causes physical injury to another person by means of a deadly weapon or dangerous instrument; or

- (3) Recklessly causes serious physical injury to another person;
- (4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause physical injury to any other person than himself; or
- (5) Recklessly causes physical injury to another person by means of discharge of a firearm.

The Board argues that, in the past, this Commission has found a reasonable relationship between assault offenses and the functions and duties of other professions that involve interaction with members of the public. It cites our previous decisions involving licenses for real estate salespersons and emergency medical technicians, and argues that funeral directors, like members of those other professions, might meet with clients or family members alone.

Reasonable relation is a low threshold. To relate is to show or establish a logical or causal connection. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1916 (unabr. 1986). "Reasonable" means "being or remaining within the bounds of reason: not extreme: not excessive;" and "not conflicting with reason: not absurd: not ridiculous." *Id.* at 1892. We conclude that for a criminal offense to be reasonably related to the functions, qualifications or duties of a profession, the relationship between the offense and the profession must be logical and not strained or exceedingly tenuous. We find no reasonable logical connection between the crime of second-degree assault and the profession of funeral directing. To do so would disqualify anyone who had ever been convicted of such an assault from a profession involving even a small possibility of any solitary interaction with a client or member of the public. To the extent that any of our decisions have implied such a broad reading of the reasonable relationship requirement as it applies to second-degree assault, we note only that our decisions are not precedential. *Central Hardware Co. v. Director of Revenue*, 887 S.W.2d 593, 596 (Mo. banc 1994).

On the other hand, we agree with the Board that violence is an essential element of second-degree assault. An essential element is one that must be proved for a conviction in every case. *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961). Violence is the “exertion of any physical force so as to injure or abuse[.]” WEBSTER’S at 2554. A finding of violence is required to satisfy any of the prongs of second-degree assault. Thus, there is cause to deny Williams a license under § 333.330.2(2).

2. The Sexual Offenses

Section 566.064, RSMo 1994, defined statutory sodomy in the second degree:

1. A person commits the crime of statutory sodomy in the second degree if being twenty-one years of age or older, he has deviate sexual intercourse with another person who is less than seventeen years of age.

“Deviate sexual intercourse” was defined in § 566.010(1), RSMo 1994, as:

any act involving the genitals of one person and the mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person[.]

Williams also pled guilty to sexual misconduct in the second degree, defined in § 566.093, RSMo. 1994, as follows:

1. A person commits the crime of sexual misconduct in the second degree if he:
 - (1) Exposes his genitals under circumstances in which he knows that his conduct is likely to cause affront or alarm; or
 - (2) Has sexual contact in the presence of a third person or persons under circumstances in which he knows that such conduct is likely to cause affront or alarm.

The Board does not contend that either of these offenses involves fraud, dishonesty, or violence. It does, however, argue that they are reasonably related to the qualifications, functions or duties of a funeral director and/or pre-need agent, for the same reasons it contends that

second- degree assault is so related: because a funeral director could be left alone with individuals or children. The Board cites our previous decisions involving other professions, specifically nursing and physical therapy. Manifestly, however, the functions or duties of those professions involve far more contact with physically vulnerable individuals and children than the functions or duties of the profession of funeral director. Again, the Board's argument would disqualify anyone who was ever convicted of such offenses from any profession that involved possible one-on-one contact with clients or members of the public – potentially, most of the licensed professions. In the case of a funeral director, we reject the argument.

B. Good Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). A person's good moral character may be rehabilitated. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 616 (Mo. App., K.C.D. 1974); *State Bd. of Regis'n for the Healing Arts v. De Vore*, 517 S.W.2d 480, 486 (Mo. App., K.C.D. 1974). Therefore, we determine the question of Williams' moral character at the time of this hearing, not as it might have been in the past. But those events are relevant to our determination on this point, so we first determine whether Williams actually committed the offenses.

1. What offenses did Williams commit?

Williams pled guilty to second-degree assault. Although Williams initially received a suspended imposition of sentence in connection with this offense, that sentence was later converted to a suspended execution. A suspended execution of sentence is a conviction. *Bowers v. State*, 330 S.W.3d 832, 836 fn. 4 (Mo. App. W.D., 2011). A conviction resulting from a guilty plea collaterally estops the issue of whether the person committed the criminal

offense. *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App., E.D. 2004) (citing *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001)). Thus, Williams committed the crime of second-degree assault.

Williams' two guilty pleas to the sexual offenses resulted in suspended impositions of sentence. A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether a person committed a criminal offense. *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009). A guilty plea is evidence of the conduct charged. The plea constitutes a declaration against interest, which the defendant may explain away. *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967). In his applications for licensure, Williams denied he committed the sexual offenses. We must decide, based on the record before us, whether he did.

Williams initially pled not guilty and fought the charges. He claims that he eventually pled guilty because he had exhausted his resources and was offered a plea deal of a suspended imposition of sentence with two years' probation, as opposed to the risk of going to trial, which could result in his daughter having to testify and a potential outcome of 25 years in prison and the consequent inability to provide for his family. This is a credible explanation.

But a review of the court and police records submitted with the case shows that the minor's story was consistent with and corroborated in large part by two other minors in the house at the time of the sexual misconduct. We also consider the procedural safeguards provided to a defendant when he pleads guilty. The evidence in the record shows that Williams was afforded these safeguards, including representation by counsel and careful questioning by the court. Finally, Williams' own statements in the record on this issue are equivocal. While he denied having committed the offenses in his applications for licensure, his original complaint refers to circumstances of his earlier life that "weren't so perfect and even caused some harm to those

with whom I love and cherish dearly. Although these matters did happen, I have fulfilled all of the courts mandates and have since then lived my life accordingly and have remained out of trouble with the law.” At the hearing, he neither expressly denied nor admitted that he committed the sexual offenses. We conclude that Williams has not shown, by a preponderance of the evidence, that he did not commit the sexual offenses to which he pled guilty.

2. Rehabilitation/Present Moral Character

Our conclusion that Williams committed the criminal offenses of second-degree assault, second-degree statutory sodomy, and second-degree sexual misconduct does not end our inquiry. The last of the criminal offenses occurred fifteen years ago. Williams’ altercation with his stepson occurred ten years ago and the charges were dropped. We make our findings of good moral character and rehabilitation based on the record in front of us, as of the time of the hearing, not when those events occurred. As the court stated in *Missouri Real Estate Appraisers Comm’n v. Funk*, 306 S.W.3d 101, 105 (Mo. App. W.D., 2010):

[T]he AHC was entitled to conduct a fresh inquiry into whether Funk was deserving of certification, based upon the entire record of relevant admitted evidence pertaining to certification. *Dep’t of Soc. Servs., Div. of Med. Servs. v. Senior Citizens Nursing Home Dist. of Ray County*, 224 S.W.3d 1, 15 (Mo.App. W.D.2007) (“The commission actually steps into the department's shoes and becomes the department in remaking the department's decision. This includes the exercise of any discretion that the department would exercise.”) Thus, the inquiry of the AHC was whether, ***at the time of the AHC hearing***, Funk met the requirements for general real estate appraisal certification as outlined in sections 339.511.3 and 339.535

(Emphasis added; footnotes omitted). We follow the direction of the court of appeals and define our task as determining whether, at the time of the hearing, Williams possessed the qualifications for licensure as a funeral director, including good moral character.

In doing so, we consider the relevant case law and the factors set forth in § 314.200, RSMo 2000, which provides that felony convictions may not preclude an applicant for a license from demonstrating good moral character. Rather, we:

may consider the conviction as some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction, and other evidence as to the applicant's character.

And, as the courts have also told us, to find good moral character under such circumstances, we must also find that Williams has been "rehabilitated." *See De Vore*, 517 S.W.2d at 487; *Finch*, 514 S.W.2d at 616; *Trueblood*, 368 S.W.3d at 268.

We have already determined that Williams' criminal offenses are not reasonably related to the licenses he seeks. The last of his convictions occurred fifteen years ago. Since then, he has consistently supported his family, become very involved with his church, and earned the trust and respect of his pastor and business associates. A number of witnesses testified on Williams' behalf, including his wife, his pastor, and licensed funeral directors with whom Williams has worked. All attested to his character, compassion, and work ethic. Despite some obvious domestic difficulties, Williams has been married to his wife for over twenty-one years.

If we were considering only Williams' past criminal offenses and the way he conducts his life now, we would find that he has good moral character, exercise our discretion, and grant him the licenses for which he has applied. But an applicant who is rehabilitated acknowledges his or her past crimes or misconduct and embraces a new moral code. *Francois v. State Bd. of Regis. for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App. E.D. 1994). Therefore, having determined that Williams committed the sexual offenses to which he pled guilty, we must also consider the fact that he has not acknowledged the same.

Williams' failure to acknowledge committing the sexual offenses demonstrates a present lack of honesty in this respect, which is a key component of good moral character. It also demonstrates that his rehabilitation is incomplete. This is a very close case, but we determine that Williams has not shown that he currently has good moral character. Good moral character is

a qualification for licensure, not a discretionary cause for denial. At present, Williams lacks an essential qualification for licensure as a funeral director. We note that nothing precludes him from applying for licensure in the future if the relevant facts and circumstances change.

Summary of Cause for Denial

There is cause to deny Williams a license under § 333.330.2(2) because he pled guilty to second-degree assault, an essential element of which is violence. Williams did not meet his burden to prove he has good moral character, so we have no discretion in this matter. We must deny his license applications.

Summary

We deny Williams' applications for licensure as a funeral director and pre-need agent funeral director.

SO ORDERED on July 9, 2014.

\s\ Karen A. Winn
KAREN A. WINN
Commissioner